

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

S. S.,

Petitioner,

v.

THE SUPERIOR COURT OF ORANGE
COUNTY,

Respondent;

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Real Party in Interest.

G057801

(Super. Ct. No. 17DL0550)

O P I N I O N

Original proceedings; petition for a writ of prohibition/mandate to challenge an order of the Superior Court of Orange County, Bradley S. Erdosi, Judge. Petition granted.

Sharon Petrosino, Public Defender, and Deputy Public Defender Richard Cheung for Petitioner.

No appearance by Real Party in Interest Todd Spitzer, District Attorney.

Jeff Wertheimer, General Counsel, for Respondent Court.

THE COURT:*

Petitioner S. S. filed a peremptory challenge to respondent court pursuant to section 170.6 of the Code of Civil Procedure.¹ S. S. contends respondent court abused its discretion when it denied the petition as untimely. We agree and therefore grant the petition.

PROCEDURAL FACTS

On April 14, 2017, S. S.'s case appeared on calendar for the first time. The minute order states, "No appearance in court by minor. Minor is currently incarcerated in Oregon." The minute order also states the court appointed the Public Defender's Office, an arrest warrant was issued for S. S., and the matter was set for a hearing on October 15, 2018.

The minute order for October 15, 2018, again states, "No appearance in court by minor. [¶] Minor in custody in Oregon." The court ordered the probation officer to prepare the "Information for Court Officer for the next hearing date," which was scheduled for April 2, 2019.

The minute order for April 2, 2019, again states, "No appearance in court by minor. Minor is in custody in Oregon." The court again ordered the probation officer to prepare the "Information for Court Officer for the next hearing date," which was scheduled to take place on August 5, 2019, "for REVIEW – WARRANT in Dept. L44."

Prior to the hearing on August 5, 2019, petitioner appeared in court on May 21, 2019. The minute order states, "Minor present in court in custody." On the same day, counsel filed a "Declaration in Support of Motion Re Disqualification of Judicial

* Before Aronson, Acting P. J., Fybel, J., and Goethals, J.

¹ All further references are to the Code of Civil Procedure unless otherwise noted.

Officer Pursuant to C.C.P. 170.6.” (Capitalization omitted.) The minute order states, “Court denies the motion as it is untimely.”

On May 31, 2019, S. S. filed a petition for writ of prohibition/mandate and a request for an immediate stay asking this court to direct respondent court to vacate the order denying S. S.’s peremptory challenge and to enter an order granting the peremptory challenge. Included as an exhibit to the petition is a Public Notice from the Presiding Judge of the Juvenile Court that gives notice of designated judicial assignments in Departments L21, L34, and L42. The Public Notice is dated December 1, 2017, and it identifies a number of judges and courtroom assignments, but it does not include respondent court or courtroom L44.

Citing *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 180, this court invited real party to file an informal response to the petition. On June 3, the court filed correspondence from the district attorney’s office that states, “real party does not intend to file a response.”

Presumably because resolution of the petition may affect the juvenile court’s operating procedures, on June 4, 2019, the Office of General Counsel filed a letter on behalf of the Orange County Superior Court “to clarify that the juvenile court assigns cases on an all-purpose assignment basis.” General Counsel states further that “Pursuant to the Orange County Superior Court’s judicially noticeable Judicial Court Administrative Order No. 11/003-900, cases are assigned on a direct calendar system by which cases are assigned for all purposes.”

Included with the correspondence from General Counsel is a copy of the juvenile court’s policy of “Assignment of Cases and Peremptory Challenges” in Juvenile Court Administrative Order No. 11/003-900, signed November 15, 2011, and it states in relevant part, “This court assigns delinquency, dependency, and truancy cases on a direct calendar system. Under this system, a case assigned to a particular judge or commissioner will remain with that judicial officer until the termination of jurisdiction,

unless otherwise ordered. Under the direct calendar system, a peremptory challenge to any judge or commissioner must be made prior to any determination of contested issues of fact relating to the merits, and within 15 days after notice of the assignment of the case to a specific judge or commissioner, or it will be deemed untimely. Notice of the assignment is complete upon service or initial appearance in court. Each party will be allowed only one peremptory challenge per case. . . . (This Order is made pursuant to *Daniel V. v. Superior Court* (2006) 139 Cal.App.4th 28.)”

DISCUSSION

As a preliminary matter we note the superior court generally has no standing to appear in review of a disqualification order. (*Curle v. Superior Court* (2001) 24 Cal.4th 1057, 1071.) Nonetheless, because the District Attorney’s Office has declined to participate in this matter and resolution of the petition may impact the juvenile court’s case management system, the court will consider the letter from General Counsel filed in this court on June 4, 2019.

Section 170.6 determines when a peremptory challenge should be made. As a general rule, section 170.6 permits a peremptory challenge of a judge at any time before commencement of a trial or contested hearing, with three exceptions: (1) the “10–day/5–day” rule; (2) the master calendar rule; and (3) the all-purpose assignment rule. (*People v. Superior Court (Lavi)* (1993) 4 Cal.4th 1164, 1172; *Hemingway v. Superior Court* (2004) 122 Cal.App.4th 1148, 1154.) At issue in this case is the all-purpose assignment rule, which “is sometimes called ‘direct calendaring.’” (*Daniel V. v. Superior Court* (2006) 139 Cal.App.4th 28, 42; *Zilog, Inc. v. Superior Court* (2001) 86 Cal.App.4th 1309, 1318.)

Under the all-purpose assignment rule, section 170.6, subdivision (a)(2) states in part, “If directed to the trial of a criminal cause that has been assigned to a judge

for all purposes, the motion shall be made to the assigned judge or to the presiding judge by a party within 10 days after notice of the all purpose assignment, or if the party has not yet appeared in the action, then within 10 days after the appearance.”

The standard of review is abuse of discretion, and a trial court abuses its discretion when it erroneously denies a section 170.6 challenge as untimely.

(*Hemingway v. Superior Court, supra*, 122 Cal.App.4th 1148, 1153.) Section 170.6 applies to juvenile court cases (*Pamela H. v. Superior Court* (1977) 68 Cal.App.3d 916, 918) and “[a]ny superior court policy or practice that is in conflict with those statutory time provisions [in § 170.6] is void. [Citations.]” (*Daniel V. v. Superior Court, supra*, 139, Cal.App.4th 28, 39.)

Based on the record in this case it is unclear why respondent court denied the peremptory challenge as untimely because S. S. did not appear in the action until May 21, 2019, the same day he filed the peremptory challenge. If respondent court determined the peremptory challenge was untimely because counsel’s appointment in 2017 represented the first appearance in the case, *Jones v. Superior Court* (2016) 246 Cal.App.4th 390, states, “Crediting this argument would mean petitioners would have had to file their peremptory challenges before they were arraigned or given a file-endorsed copy of the criminal complaint. We reject the argument.” (*Id.* at 405.)

DISPOSITION

Let a peremptory writ of mandate issue directing respondent court to vacate its order entered on May 21, 2019, denying petitioner’s peremptory challenge made pursuant to section 170.6 of the Code of Civil Procedure, and enter an order granting the peremptory challenge. In the interest of justice, the opinion in this matter is deemed final as to this court forthwith and the clerk is directed to issue the remittitur forthwith. (Cal. Rules of Court, rule 8.490(b)(2)(A).)